# STATE OF MICHIGAN

# COURT OF APPEALS

In re Estate of BESSIE PEARL JONES, Deceased.

ANDREW WILSON, Personal Representative of the Estate of Bessie Pearl Jones,

Petitioner-Appellee,

v

LISA OLIVER,

Respondent-Appellant.

UNPUBLISHED
February 1, 2007

No. 265421
Wayne Probate Court
LC No. 2004-676913-DA

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Respondent appeals as of right the probate court order quieting title in the realty known as 20001 Cherrylawn (hereinafter the "property").[1] We affirm, but remand for correction of the order to quiet title. This appeal is being decided without oral argument. MCR 7.214(E).

Bessie Pearl Jones died intestate in 2003, and petitioner was appointed personal representative of her estate. Despite a 2002 quitclaim deed purportedly conveying the property from Jones to respondent, the probate court found that the property was an asset of Jones's estate. On appeal, respondent argues that the trial court erred in determining that there was clear and convincing evidence that the deed purportedly transferring the property from Jones to respondent was fraudulently executed. We disagree.

When determining property rights or interests of a decedent's estate, the probate court's legal and equitable jurisdiction is concurrent with that of the circuit court. MCL 700.1303. We review de novo an action to quiet title, which is equitable in nature. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). We review for clear error the findings of a probate court sitting without a jury. *In re Williams Estate*, 133 Mich App 1, 13; 349 NW2d 247 (1984). A finding is clearly erroneous

[1] The probate court incorrectly referred to the property as "16230 Parkside."

when the reviewing court is left with a firm and definite conviction that a mistake has been made. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). We defer to the probate court on matters of credibility, and we give "broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *Id*.

A deed to transfer realty is presumed valid if it is in writing, signed by the grantor, witnessed, and notarized. MCL 565.47;[2] MCL 565.152.[3] It is also presumed that the signatures affixed to a deed are accurate and valid. *Boothroyd v Engles*, 23 Mich 19, 21 (1871). However, such a presumption of validity may be overcome by establishing clear and convincing proof that the deed was fraudulently executed. *Mtynarczyk v Zyskowski*, 191 Mich 213, 224; 157 NW 566 (1916). In general, fraud will not be presumed, and must be proved. *Groth v Singerman*, 328 Mich 615, 619; 44 NW2d 155 (1950). The party claiming fraud has the burden of proof. *Id*. Although clear and convincing evidence is required to establish fraud, circumstantial evidence may be sufficient. *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 458; 559 NW2d 379 (1997).

Respondent contends that there was no evidence presented to suggest that Jones was incompetent, that respondent took advantage of her, or that respondent exercised undue influence over her. However, the alleged fraud in this case was accomplished through a purported forgery, not through undue influence. Respondent claims that the deed was presumptively valid since it was in writing, signed by Jones, witnessed by Ethel Irvin, and notarized. Respondent does not present any evidence to rebut the claim that the deed was fraudulently executed, but rather presents evidence that she took care of Jones on a daily basis. Respondent points to her own testimony and that of her siblings to establish that she had the closest relationship with Jones of any of Jones's grandchildren.

Despite respondent's claims to the contrary, petitioner's handwriting expert opined that Jones's purported signature on the quitclaim deed was likely forged.[4] In addition, although the deed was purportedly witnessed by Ethel Irvin and bore the signature "Ethel Irvin" as that of a witness, Irvin, who was Jones's sister, testified that she did not witness the deed. Although respondent testified that she believed Jones knew a different person who was also named Ethel Irvin, Irvin testified that she was unaware of another individual with that name and that Jones had never mentioned the existence of another Ethel Irvin.

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[2] MCL 565.47 provides, "A deed, mortgage, or other instrument in writing that by law is required to be acknowledged affecting the title to lands, or any interest therein, shall not be recorded by the register of deeds of any county unless the deed, mortgage, or other instrument is acknowledged or proved as provided by this chapter."

[3] MCL 565.152 provides, "Any conveyance of lands worded in substance as follows: 'A.B. quit claims to C.D. (here describe the premises) for the sum of (here insert the consideration),' the said conveyance, being duly signed, sealed, and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quit claim to the grantee, his heirs, and assigns."

[4] Respondent's handwriting expert was unable to make a conclusive determination regarding the authenticity of Jones's signature and requested additional handwriting exemplars.

While the face of the deed indicated that it had been prepared by respondent, bearing respondent's name as the preparer, respondent denied having prepared it. Further, respondent testified that she was unsure when she had received the quitclaim deed from Jones. Respondent claimed that the deed was simply included in a pile of papers that Jones had given to her.

The purported signatures on the deed were dated February 19, 2002, but the deed was not purportedly notarized until November 5, 2002. Respondent's neighbor Gary Fareed, who worked for a law firm, testified that respondent had asked him where she could have a deed notarized. Fareed testified that he referred respondent to a notary at his law firm. However, respondent testified that she did not know Fareed.

The face of the deed indicated that had been notarized, bearing the purported signature of notary Diane Hammond, who worked at the same law firm as Fareed. However, Hammond testified that she could not recall having notarized the deed. Moreover, near Hammond's purported signature appeared a checkmark, indicating that the signors of the deed had been personally known to the notary. However, Hammond testified that she did not know Jones or anyone named Ethel Irvin, and that it was her normal practice to ask for identification from signors that she did not personally know.

Another quitclaim deed for the same property was entered into evidence as well. This second deed was purportedly executed and notarized in August 2002, before the quitclaim deed at issue in this case was ever recorded. The second deed, recorded on May 26, 2004, identifies respondent as the grantor and a third party as the grantee. However, respondent denies having any knowledge of this second deed or of the third-party grantee.

As noted above, we defer to the probate court's special opportunity to view the demeanor of the witnesses and assess their credibility. *In re Erickson Estate*, *supra* at 331. Much of respondent's testimony in the instant case conflicted with that of Fareed and Hammond. Moreover, respondent's credibility was partially called into doubt by the testimony of Irvin and the face of the deed itself. The probate court evidently disbelieved at least part of respondent's testimony in this case, as it was free to do. Deferring to the probate court's unique opportunity to assess witness credibility, we conclude that the court properly determined that the quitclaim deed was fraudulently executed. We further conclude that the probate court properly determined that respondent failed to rebut the claim of fraud. The probate court did not clearly err in finding clear and convincing evidence that the purported quitclaim deed from Jones to respondent was fraudulently executed. Title to the property was properly quieted in the Jones estate.

We note that the probate court, in its opinion and order, incorrectly referred to the property at issue as 16230 Parkside, Detroit. However, the correct address of the property at issue is 20001 Cherrylawn, Detroit. This discrepancy was evidently caused by a mere clerical error, and we therefore remand for the limited purpose of correcting the address listed in the probate court's order.

Affirmed, but remanded for correction of the order to quiet title. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper